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California Air Resources Board
1001 I Street
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Attn: Ms. Manisha Singh
Via email to: mansingh@arb.ca.gov

Re: Comments for Draft LCFS Regulation

ConocoPhillips appreciates the opportunity to comment on The California Low Carbon Fuel Standard Regulation draft proposal and materials provided at the January 30, 2009 workshop. These comments re-iterate many of the written comments which were previously submitted in response to the earlier drafts of the proposed regulation (October 2008 and December 2008). ConocoPhillips is directly impacted by this regulation as we own and operate two refineries in the State of California. In addition, we have pipeline, terminal, and marketing assets in the State that distribute fuels produced at our refineries. ConocoPhillips is a member of the Western States Petroleum Association (WSPA) and support the comments submitted by WSPA. In addition to the WSPA comments, we offer the following.

Section 95421 Applicability

(b) Credit Generation Opt-in Provision for Specific Alternative Fuels

ConocoPhillips strongly opposes the addition of this new section and recommends its removal. Not requiring all transportation fuels to comply with the LCFS will limit the availability of credits which may be needed to comply with the regulation. Allowing the listed alternative fuels to "opt-in" only if they choose to generate credits has the potential to limit credit supply and limits flexibility for other regulated parties, increasing costs and decreasing potential success of the program. Credit availability from all fuel provider sectors allows optimization of fuel supply and cost which directly benefits California consumers.

Section 95424 Compliance

(a) Regulated Parties

From our read of the latest draft it appears that when a regulated party transfers ownership to a party that is not a producer or importer, then the default case is that the transferor remains the regulated party (95424(a)(B)(4)). This is a change from the December draft and ConocoPhillips questions the reasoning for this change. ConocoPhillips believes the point of compliance should be where parties have control over the fuel at the point of delivery to the consuming marketplace. Refiners or importers of the fuel who do not retain title when it is blended with renewable fuel downstream, have limited control over what the downstream party will chose to blend. The downstream party may make choices based on the lowest cost option versus what is needed to meet the LCFS standard. ConocoPhillips also believes that a producer or importer of "finished fuel" should be able to retain the compliance obligation if the "finished fuel" from the production or import facility does or does not contain a renewable fuel with lower carbon intensity than the base fuel. The carbon intensity of the renewable fraction should be based upon the life cycle analysis for the individual renewable fuel pathway (examples include renewable gasoline, renewable diesel, etc).

Section 95424(a)(C)(2) appears to allow a supplier of oxygenate to be able to retain the compliance obligation. One potential outcome, if this were allowed, could be for an oxygenate producer to sell the oxygenate to a CARBOB producer or importer, keep the “credit” and then either sell that “credit” to a party other than the one that purchased the oxygenate or who supplied the CARBOB. ConocoPhillips recommends that this section be removed and that the carbon intensity (CI) associated with the oxygenate be transferred (by default) along with the oxygenate.

(c) Compliance and Progress Reporting Requirements

ConocoPhillips continues to comment that the proposed requirement for quarterly reporting is not warranted. CARB has not justified the benefit of this new reporting burden on industry. As the LCFS is an annual program, the Agency should not require reporting more frequently than annually. CARB’s proposed reporting requirements include providing the Executive Officer with copies of product transfer documents (PTDs) when transfer of compliance obligation occurs. The Agency should not require physical copies of PTDs to be provided. Rather, the Agency should build reporting formats that would include information on who the transferee is and retain the right to request documentation if necessary.

ConocoPhillips also seeks clarification regarding terms and requirements in Table 4 (Summary Checklist for Reporting). The terms “blendstock”, “blendstock feedstock” and “feedstock origin” are not applicable regarding the production of CARBOB and CARB diesel. It is also not clear why in previous versions of the table, certain fields were “optional” and now they are “required”. Please explain.

ConocoPhillips continues to comment that the feasibility of including a requirement for sustainability reporting is premature at this time. Our previous comment is copied below

The LCFS implementation, including reporting, will be a very complex task for multiple industry segments. Inclusion of sustainability reporting would significantly increase the complexity of the reporting requirements and should not be considered at this time. In addition, the definition of “sustainability” is vague and uncertain. In the absence of a consensus definition of sustainability, it is premature to add reporting requirements for this undefined parameter at this time.

We supported CARB’s removal of this reporting requirement in their December draft. However, during the January 30th workshop, CARB indicated that sustainability was part of the “What’s Left?” list of items to be addressed for the current rulemaking. We ask for CARB to clarify their reasoning for this reversal..

(d) Recordkeeping and Auditing **(2) Evidence of Physical Pathway**

This section will require clarification as to what appropriate documentation is. It is unclear whether or not actual volumes of the alternative fuels must be blended in California. A demonstration of a physical pathway should be sufficient. If however, some volume of the alternative fuel must be blended into California fuels, this will lead to increased emissions associated with increased transportation to get the fuels to California (“shuffling”). The Federal EPA is currently working on rulemaking to implement the provisions of the Energy Independence and Security Act of 2007. Recordkeeping and auditing provisions of the California LCFS should synchronize with the Federal provisions in this area as much as possible to avoid multiple systems. For example, the current RFS uses Renewable Identification Numbers (RINs) to track volumes of renewable fuel used for compliance with the RFS. The RINs identify the production facility where the renewable fuel was produced and the type of renewable fuel. It would be advantageous for California to build upon that system rather than creating a need for new documentation for reporting purposes.

Section 95425 LCFS Credits, Deficits, and Incremental Obligation

(c) Credit acquisition, banking, borrowing, and trading

CARB commentary was provided in this section indicating that the Agency may place limits on credits generated in the early years of the program. ConocoPhillips is opposed to this as it may tend to defer parties from taking affirmative actions in the near term. Any reductions achieved in the early part of the program, or any time in the program, should be allowed to be banked and used in later years toward compliance. This will help incentivize early action. Another reason to not “discount” early year credits is that based upon input from the University of California at Berkeley, early reductions may be more valuable than later reductions. The December draft included a 20 percent credit rollover cap, which was not included in the October draft. This cap is unwarranted and should not be included. Companies should be allowed to utilize their credit bank and other available credits in the most cost effective manner.

The one-way limit on credit trading (LCFS credit may be exported for compliance with other greenhouse gas reduction initiatives, however, credits generated from outside the LCFS program cannot be used in the LCFS) constrains optimization and limits the cost effectiveness of the program. This concept is also counter to AB32 which requires “...the state board to adopt rules and regulations... to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions...” The Bill also authorizes “... the state board to adopt market-based compliance mechanisms...” Allowing exchange of credits between programs will result in reductions where they are the most cost-effective. Given the current economic situation and constraints, this is an important factor in minimizing the economic impact to businesses and consumers as the result of these programs.

Section 95426 Determination of Carbon Intensity Values Non-Conventional Crudes

In assessing non-conventional crude production, CARB should consider other regulatory CO₂ programs (current and future) in evaluating LCA pathway elements. If CARB fails to do this, the LCA will impose demerits on oil sands production even though other regulated areas (such as Canada) have already imposed controls (operational, offsets, fees, etc.) that have accounted for the production intensity of the crude in that region. The imbedded “deselect” for oil sands created by the absence of this consideration will lead to problematic trade considerations and will no doubt result in “crude shuffling”.

General LCA

Although CARB presented some updated fuel GHG pathway values at the January 30th workshop, the LCA is still a work-in-progress and remains a significant point of uncertainty. This uncertainty combined with questions around the evidence of physical pathway make it difficult to begin compliance planning. We continue to have concerns over the methodology and actual values used in the LCA modeling. These are specific and technical points that would best served in a face-to-face meeting to review or through separate specific comments, rather than trying to communicate them through inclusion of these broader comments. In addition, ConocoPhillips urges CARB to work with the Federal EPA to the maximum extent possible in order to harmonize the modeling work associated with both the Federal RFS program and the California LCFS.

Economic Analysis

ConocoPhillips believes that economic analyses and the associated technological feasibility studies should “drive the process”. We believe these assessments should be the basis for policy and regulatory decisions and should be completed and reviewed before regulations are proposed and adopted. ConocoPhillips has serious concerns regarding CARB’s current “Estimated Alternative Fuel Costs” and “Feedstock Costs” as presented in the 11/26/08 document, at the

12/2/08 workshop and at the 1/30/09 workshop. We believe more comprehensive and peer reviewed assessments are needed along with reconciliation against other federal and regional evaluations. We request and anticipate the ability to review and comment on CARB's future work in this area once more details are provided. We request that CARB present their analyses in a transparent format that documents calculations and the assumptions that went into those calculations (along with cited references). We also request that the economic evaluation be made on a consistent temporal basis and that a sensitivity analysis be part of the study.

In addition, during the January workshop discussion of the economic analysis, CARB indicated that the LCFS will result in lost revenues to Government. We request that CARB provide cost estimates of these revenue losses over the life of the program.

Fee Schedule

During the January workshop CARB mentioned a "Fee Schedule" as one of the items that is left to be addressed. Please clarify and address what this concept means and where it will apply.

Periodic Review

Periodic review of the regulation is essential. It appears the latest draft has changed the review from a public process to an internal Agency review. We strongly encourage CARB to include stakeholders and other agencies (such as the CEC) in the review process. Achieving the compliance goals of the LCFS will be very dependent on development and commercialization of new technologies. It is imperative that the Agency periodically assess the progress of these technologies and make adjustments in compliance schedules and requirements as necessary based on the outcome of the review process.

Thank you for the opportunity to comment on the draft proposal. We appreciate CARB's efforts to share these early drafts. However, we remain extremely concerned about the promulgation timeline and allowance for due process in rulemaking while providing regulated parties an adequate timeline for compliance relative to the Early Action Process. Final provisions of the rule and front-end requirements will determine the workability of the program.

Please contact me at the above address or at (562) 290-1521 with any questions regarding these comments.

Regards,

<H. Daniel Sinks>

ecc: Bob Fletcher (CARB)
John Courtis (CARB)
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